IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2006

CORAM

THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

W.P.No.13060 of 2006

Rukmani Devi .. Petitioner

vs

1. The Director
   Director of Elementary Education
   College Road, Chennai - 6.

2. The District Elementary Educational
   Officer,
   Thoothukudi.

3. The Additional Assistant
   Elementary Educational Officer,
   Tharamangalam, Karungulam. .. Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the third respondent in connection with the order passed by him in his proceedings Na.Ka.No.239/A3/05, dated 09.01.2006 and quash the same and consequently, direct the respondents to pay the backwages from the date 01.02.1998 to 31.08.1999 with arrears of salary 40% as per the 6th pay commission and pongal bonus for this period.

For Petitioner : Mr.R.Ravichandran

For Respondents : Mr.A.Arumugam, AGP

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O R D E R

The prayer in this writ petition is to quash the order dated 09.01.2006 with a direction to the second respondent to pay the salary due to the petitioner from 01.02.1998 to 31.08.1999.

2. The petitioner worked as Secondary Grade Teacher in Backiyalakshmi Elementary School, Chokkalingapuram, Chekkarakudi Post, Karungulam,Tuticorin District and there was enmity between the

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petitioner and the school Headmaster, namely Selvaraj. The petitioner was suspended by an order dated 14.12.1992 with effect from 17.12.1992. Charges have framed and enquiry was conducted and thereafter, the petitioner was terminated from the service.

3. The said order of termination was challenged in W.P.No.3215/1994 and this Court directed the respondent to dispose of the representation submitted by the petitioner on 28.02.1994. On 21.04.1994, the second respondent passed an order directing reinstatement of the petitioner with full backwages. The petitioner, having not been reinstated, filed W.P.No.10311/1994 and prayed for issuance of a writ of mandamus to implement the second respondent's order dated 21.04.1994. The learned single Judge of this Court dismissed the writ petition, as against which the petitioner filed W.A.No.445/1995 and a Division Bench of this Court allowed the Writ Appeal on 26.05.1995 with a cost of Rs.1000/- to be paid by the third respondent. Paragraph 11 of the judgment is extracted here under for proper appreciation.

> " That apart, though the order declining approval was passed by the competent authority as early as on 21.04.1994, so far the third respondent management has not chosen to take any steps to challenge the same in a manner known to law either before the statutory authorities stipulated under the Act or before this Court under Art. 226 of the Constitution of India. While that be the position, it is not permissible for the third respondent to collaterally attempt to attack the order while opposing the claim of the appellant in this case under Art.226 of the Constitution. The order of the learned Judge countenancing the defence of the third respondent in these proceedings, in our view, does not lay down the correct position of law. The third respondent is not only bound to implement the order of the second respondent dated 21.04.1994 and it cannot also avoid the liability to pay the emoluments due to the appellant for the period beyond the expiry of four months from the date of the order of suspension pending framing of charges. The further stand taken by the third respondent on the basis of the letter surrendering the post with the services of the appellant cannot also be countenanced since it is not given to the appellant to so surrender a post with an incumbent unilaterally and plead it as an excuse for avoiding compliance with the statutory order passed by the competent authority. The said action on the part of the third respondent is merely arose to avoid his

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statutory liability and it only go to show the extent of abuse of power on the part of the third respondent. "

4. The management failed to implement the order passed by the Division Bench of this Court and therefore, the petitioner preferred Contempt Application No.475/95, against the management and thereafter, a compromise was entered into between the management and the petitioner on 29.03.1996. The Compromise Memo, dated 29.03.1996 is also produced before me, which reads as follows:

" In lieu of the back wages, the third respondent (contemner) now offered to transfer the Management of the School in favour of the Applicant / Appellant. Accordingly, he signed the Transfer Application Form and handed over the Title Deeds relating to the School Property. In view of the above, both the parties agreed to compromise the issue and accordingly signed this Memo."

5. Thereafter, the petitioner took the Management of the School and the transfer of Management of the school was also approved by the Department on 29.03.1997. According to the petitioner, the Management closed the school on 14.02.2004 and the petitioner was transferred with post to Palaniandavar Middle School, Pappakudi, Sivagangai District in terms of Section 26 of the Tamil Nadu Private Schools (Regulation) Act, 1973.

6. The grievance of the petitioner is that for the period from 01.02.1988 to 31.08.1999, the petitioner was not paid salary. Hence, she made a representation on 03.05.2005 to the second respondent and the second respondent having not taken any action, the petitioner filed W.P.No.7321/2005 before the Madurai Bench of Madras High Court and a direction was issued to the second respondent to consider the representation dated 03.05.2005 to pass orders on merits and in accordance with law within a period of 8 weeks. The third respondent thereafter passed an order on 09.01.2006 and rejected the claim of the petitioner on the ground that till closure of the school on 14.02.2004, no proposal was submitted by the Management regarding the petitioner's claim for salary from 01.02.1998 to 31.08.1999, the sixth pay commission benefits, bonus for 1997 and 1998 and salary for October and November 2000.

7. The learned counsel for the petitioner submitted that the petitioner continuously worked in the school from 01.02.1998 to 31.08.1999, October and November 2000 and due to the dispute in the Management, the claim statement for the payment of salary for the above period was not submitted and as the school is closed, the petitioner as well as other teachers were absorbed in various other

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schools as per Section 26 of Tamil Nadu Private Schools (Regulation) Act, 1973. In view of the said change of position, particularly, the closure of the school, there is no possibility to send the proposal to claim salary for the above period. The reason given by the third respondent in the impugned order is hyper technical in nature and the petitioner, having worked for the above period, is entitled to get salary for the above period.

8. The reason given by the third respondent in the impugned order is unsustainable as the management is not in existence and therefore, the said order is set aside and the writ petition is allowed and the petitioner is entitled for salary from 01.02.1998 to 31.08.1999 and also Pongal bonus for 1997 and 1998 and Salary for October and November 2000. The second respondent is directed to pay the said salary and other benefits, if the petitioner really worked during the said period. The same shall be calculated and paid within 8 weeks from the date of receipt of a copy of this order. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Director
   Director of Elementary Education
   College Road, Chennai - 6.

2. The District Elementary Educational
   Officer,
   Thoothukudi.

3. The Additional Assistant
   Elementary Educational Officer,
   Tharamangalam, Karungulam.

+1cc to Govt. Pleader Sr 27415
+1cc to Mr.R.Ravichandran, Advocate Sr 27202

AK (CO)
km/7.7.

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